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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Deployment of Wireline Services Offering
Advanced Telecommunications Capability

)
) CC Docket No. 98-11 ✓
) CC Docket No. 98-26
) CC Docket No. 98-32
) CC Docket No. 98-78
) CC Docket No. 98-91
) CC Docket No. 98-147
)

REPLY COMMENTS OF MCI WORLDCOM, INC.

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MCI WorldCom, Inc. ("MCI WorldCom") hereby submits these reply comments in response to the initial comments filed by other parties in the above-captioned proceedings. It is telling that only two incumbent local exchange carriers ("ILECs") -- GTE and SBC -- even bothered to file comments in support of US West's ill-conceived interpretation of the Telecommunications Act of 1996 ("1996 Act"). The assertions of these ILECs are entirely consistent with their continuing resolute opposition to the market-opening directives of the 1996 Act. Every other party filing comments -- from competitive local exchange carriers ("CLECs"), interexchange carriers ("IXCs"), and information service providers ("ISPs") to a public service commission ("PSC") and a federal government agency, the General Services Administration -- opposes what US West seeks. All these commenters agree that the Commission should reaffirm its earlier decision that the ILECs are subject to the market-opening provisions of Section 251(c) of the 1996 Act in connection with offering advanced telecommunications capabilities, including Digital Subscriber Line ("DSL") and packet-switching technologies.

I. DISCUSSION

A. The Commenting ILECs Continue To Confuse Critical Legal And Factual Issues

Although this remand proceeding is intended to clarify the specific legal requirements imposed on all ILECs in their provision of advanced telecommunications capabilities such as DSL, the three commenting ILECs continue to muddy the waters with arguments and conclusory statements that simply are not true. Much of the confusion swirls around what these ILECs universally label (but fail to define) "advanced services." For example, contrary to US West's unsupported statement, the Internet is not an example of an "advanced service;"¹ indeed, the Internet epitomizes an information service.² In a similar vein of confusion, GTE insists that not all advanced services are telecommunications services, but instead could be information services or cable services.³ Of course, Section 706 of the Telecommunications Act speaks only of "advanced telecommunications capabilities," which would rule out their inclusion as part of either of the types of services GTE mentions.

This confusion is telling, as it informs (and infects) the commenting ILECs' subsequent legal arguments. The provision addresses advanced telecommunications capabilities, not specific services. Section 706 does not attempt to parse out specific carrier and end user uses and service categories, but instead speaks broadly of "advanced

¹ US West at 2.

² US West contradicts itself later when it admits that "DSL and other advanced services constitute telecommunications services." US West at 5.

³ GTE at 5 n.9.

telecommunications capability." This "capability" is defined expansively, "without regard to any transmission media or technology," as that which allows users to originate and receive "voice, data, graphics, and video telecommunications," and "using any technology."

The non-ILEC commenters agree with MCI WorldCom that DSL is a local loop technology, not a service, that provides certain capabilities. Sprint states that "DSL is simply a loop" used in a number of different service offerings, and points out that classification of those offerings depends on the facilities to which the loop is connected.⁴ AT&T refers to DSL as "merely a pipe,"⁵ while GSA and WAISP both say it is a transmission "technology."⁶ Further, while DSL technology can support a variety of services,⁷ it is used only on copper loops. After all, both ends of the DSL technology will not even reach the LEC wire center when the copper loop ends at a remote loop carrier.

Although DSL is a quintessential example of a local loop technology, it can be combined with other technologies to provide circuit or packet-switched services, or dedicated exchange and exchange access services. Commenters note that DSL can be used to provide (1) voice and data services over a single loop, (2) an Integrated On-demand Network (ION) service, (3) transport links to a remote LAN, (4) work at home applications, and (5) channelized voice grade local exchange services.⁸ Thus, there can be no serious objection to

⁴ Sprint at 2.

⁵ AT&T at 14.

⁶ GSA at 3; WAISP at 3.

⁷ Rhythms NetConnections at 6.

⁸ Rhythms NetConnections at 11; Sprint at 3; AT&T at 15; Wisconsin PSC at 3; RCN at 4.

the fact that DSL capability constitutes a network element that allows users to receive different types of telecommunications services.

Finally, US West claims that a telephone company does not act as an ILEC or LEC when it provides "advanced services."⁹ SBC insists that only an ILEC's exchange and access services are subject to 251(c).¹⁰ Both viewpoints are wrong. The ILECs provide many services that were, and still might be, considered "advanced" in some sense -- second lines, PBX trunks, private lines, Centrex, virtual private lines, tone-dialing, CLASS services -- yet all of these were and remain local telecommunications services. This Commission has ruled that even data transport and packet-switching, while "advanced," also are basic telecommunications services.¹¹ Moreover, by its own terms, Section 251(c) is applicable based on the identify of the entity -- an incumbent local exchange carrier -- not the services that entity may provide.¹²

B. DSL Capability Can Be Used To Provide Telephone Exchange Service

The ILECs' primary argument is that DSL-based services can only be classified as an "information access" service, not a "telephone exchange service" or an "exchange access service." As MCI WorldCom's initial comments explained, however, DSL

⁹ US West at 16-17.

¹⁰ SBC at 10-11.

¹¹ IDCMA Petition for Declaratory Ruling That AT&T's InterSpan Frame Relay Service Is A Basic Service, Memorandum Opinion and Order, 10 FCC Rcd 13717 (1995).

¹² Joint CLEC Commenters at 25-27; AT&T at 4-8; GSA at 6; Covad at 9-15; DSLnet at 3; CoreComm at 5.

technology can be used to provide a whole host of different telecommunications services.¹³ Among these services is a telecommunications offering which provides a regulated platform over which rides unregulated information services. Where the question posed concerns how DSL copper loop technology is being used by a local exchange carrier in any particular instance, the Act offers only two choices: telephone exchange service or exchange access, both of which are telecommunications services. DSL capability plainly can be used for either or both.

The ILECs claim that "DSL service" cannot be treated as a local exchange service because it does not meet any aspects of the definition of "telephone exchange service."¹⁴ As the vast majority of commenters explain, however, this claim is false.¹⁵ GSA puts it succinctly when it explains that "the addition of DSL technology to a local loop does not change the fact that all transmission over this loop is telephone exchange service."¹⁶

1. Section 153(47)(A)

The traditional statutory definition of "telephone exchange service" is a service within a local exchange or system of exchanges "operated to furnish to subscribers

¹³ MCI WorldCom at 7-10; see also Joint CLEC Commenters at 8.

¹⁴ US West at 7; SBC at 3-6; GTE at 6-8.

¹⁵ Joint CLEC Commenters at 7-; AT&T at 8-14; Prism at 9-13; Mindspring at 3-8; Level 3 at 4-7; Focal/Adelphia/KMC at 4-10; Sprint at 4; CDS Networks at 4; CoreComm at 8; RCN at 2-4; TRA at 9-13; WAISP at 3-6; GSA at 3-6.

¹⁶ GSA at 5.

intercommunicating service of the character ordinarily furnished by a single exchange...."¹⁷

The ILECs make three arguments that DSL-enabled services do not meet this definition.

First, the ILECs claim that DSL "services" do not begin and end "within a telephone exchange" or set of exchanges in the same local area, and that DSL-based Internet services in particular terminate outside the user's local exchange.¹⁸ Numerous commenters disagree.¹⁹ Prism explains that the word "service" in the definition refers to the connection between the end user and the ISP where the latter's point of presence is within the local exchange.²⁰ There are many uses of DSL-enabled telecom services that involve service between end users in the same local exchange. Further, CDS Networks observes with regard to DSL-based services to ISPs that "in real life the DSL signal always terminates at the central office, if not before."²¹ CDS explains that a rapidly growing percentage of all "mouse-clicks" aimed at the Internet never reach their destination, but instead terminate at the ISPs as a local call, through a variety of caching methods such as "Evergreen" and "Footprint."²² In addition, the ILECs deliberately focus only on the DSL-enabled local loop, and conveniently ignore the packet-switching capability and data transport functionality that are necessary for DSL-enabled services to reach their destinations. Commenters note

¹⁷ 47 U.S.C. Section 153(47)(A).

¹⁸ US West at 7; SBC at 4.

¹⁹ Joint CLEC Commenters at 11-13; Prism at 10; Level 3 at 4-6.

²⁰ Prism at 9-10.

²¹ CDS Networks at 4.

²² CDS Networks at 2-7. See also AT&T at 10 (some Internet transmissions carried over DSL facilities never leave the exchange).

that packet-switched services, just like circuit-switched services, are provided within an exchange or system of connected exchanges.²³

SBC argues further that DSL-based services do not use or interconnect with the local exchange network. For starters, "network" is not a term used in the definition of "telephone exchange service," and SBC's particular definition of a "network" has no bearing on the requirements of the Act. More to the point, packet switching is a basic telecommunications service, and DSL "service" is not possible without this switching functionality. In most cases, that packet switch will reside in the ILEC central office. As one group of commenters explains, every end user whose traffic is routed onto a packet-switched network may use its DSL connection to that network to establish a permanent virtual connection ("PVC") with any other end user on that network, or any interconnected network. Thus:

a single DSL connection, or any loop connection for that matter, to a packet-switched network is not dedicated to communications between two definite points, in the way that a private line is.... [T]he reality is that a single access link, be it DSL or otherwise, to a packet-switched network may be used to originate or terminate communications to a host of destinations.²⁴

Second, SBC claims that DSL is not "intercommunicating service" because its transmissions "are taken off the public switched telephone network at the first feasible point before arriving at any circuit switch."²⁵ As pointed out above, this is plainly incorrect; packet-switched services are every bit as "intercommunicating" as circuit-switched services.

²³ Joint CLEC Commenters at 11-12.

²⁴ Joint CLEC Commenters at 8-9.

²⁵ SBC at 5.

Mindspring notes that the term "intercommunicating" only means to exchange communications with one another.²⁶ US West's emphasis on the "always on" connection provided by certain DSL-enabled services is not relevant to whether it constitutes a telephone exchange service; in addition, commenters point to US West's own MegaBit Select as a service offering that is not "always on."²⁷ —

Third, SBC states that DSL service is not "covered by the exchange service charge," which it defines as "a carrier's basic local calling charge."²⁸ In support of this claim, GTE states that its ADSL service is offered for an additional fee.²⁹ Again, this claim is unavailing. Commenters explain that this "charge" refers to a single zone rate that covers communications anywhere within the exchange or series of exchanges.³⁰ Focal, Adelphia, and KMC believe that this portion of the definition merely refers to the fact that telephone exchange services are subject to the same charge within the local exchange area.³¹ US West's frame relay services are cited as an example of a telephone exchange service that meets this requirement.³² In any event, no end user gets access to all local services for just one fee. Each local service has a separate rate -- some local services are flat-rated, while

²⁶ Mindspring at 5 n.8.

²⁷ AT&T at 11; Mindspring at 7 n.14.

²⁸ SBC at 5-6.

²⁹ GTE at 7.

³⁰ Mindspring at 4 n.6; Joint CLEC Commenters at 12-13.

³¹ Focal/Adelphia/KMC at 6.

³² Joint CLEC Commenters at 12-13.

others have usage-sensitive rates.

GTE makes an additional bald claim that DSL services "plainly do not offer the same functionality as basic local calling service."³³ An initial response to such a statement is, so what? An obvious reason why the ILECs install new elements in their local networks is to provide new functionalities to their customers (as well as provide old functionalities in more efficient and cost-effective ways). This fact does not mean that any new service offered by an ILEC is not a local telecommunications service. Moreover, CDS Networks shows that GTE's argument is unavailing on its own terms, especially because "the ILECs are using DSL as a competitive substitute for conventional voice facilities."³⁴

GTE argues further that DSL does not provide "any-to-any" connectivity because it is "marketed predominantly to ISPs." In reality, the ILECs' "ADSL service" is marketed primarily to residential and business customers for use in accessing ISPs. More fundamentally, DSL is just a loop technology. Every DSL-equipped loop must be combined with some other capability -- another loop, circuit or packet-switching, interoffice transport -- to create a service. No rational subscriber would want to use a DSL-equipped copper loop just to reach the serving wire center, and be connected to nothing else. In any event, the term "any-to-any" is found nowhere in the Act; nor is "two-way, circuit-switched voice communications" delineated as the only way to define a telephone exchange service. Further, commenters point out that four states already have found that frame relay packet-

³³ GTE at 7.

³⁴ CDS Networks at 4.

switched services meet the definition of telephone exchange service.³⁵

2. Section 153(47)(B)

Even if DSL-enabled telecommunications services are not found to meet the traditional, 1934-era definition of telephone exchange service, the 1996 Act greatly expanded this definition to embrace new network technologies. The updated language now includes "comparable service provided through a system of switches or series of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."³⁶ As one group of commenters points out, this definition (1) is technology neutral, (2) makes no distinctions between voice and data, or digital and analog, (3) does not even require switching, and (4) does not require that the service both originate and terminate within the same local exchange area.³⁷

US West argues that the new definition is not met because DSL services "are a supplement to, and not a substitute for, basic local service."³⁸ US West defines "comparable" as services that are "functionally equivalent to and substitutable for two-way switched local calling,"³⁹ while SBC calls it "similar" or "equivalent."⁴⁰ SBC argues that

³⁵ Joint CLEC Commenters at 17-19.

³⁶ 47 U.S.C. Section 153(47)(B).

³⁷ Joint CLEC Commenters at 10.

³⁸ US West at 7.

³⁹ US West at 7-8.

⁴⁰ SBC at 6.

DSL services "plainly are not a market substitute for ordinary two-way switched local calling."⁴¹ GTE, citing nothing, claims that the "comparable" qualification refers to the type of service being provided, not the technology, so that the entire clause refers only to equivalent functionality to traditional telephone exchange service.⁴² But, as MCI WorldCom has observed, the ILECs have been using DSL to provision the loop portion of both local and interLATA DS-1 services for nearly a decade.⁴³ The DS-1 services themselves may be used for many purposes, including: (1) connecting an end user to circuit switches (24 voice circuits in a PBX trunk group); (2) providing an exchange data service -- a dedicated link between a main and branch bank; (3) providing special access services between an end user and its IXC; (4) connecting an ISP to an Internet backbone; or (5) connecting an end user to its ISP. Since there are hundreds of thousands of DSL-equipped end links on DS-1 services, there must be dozens if not hundreds of different uses for these DSL-enabled DS-1 services. Nonetheless, these are all universally considered "traditional" telephone exchange or exchange access services.

Further, as one group of commenters observes, the broad language used in the definition of "comparable service" requires only two fundamental factors: (1) telecommunications service provided within the local exchange or its equivalent, such that (2) the service is subject to a local exchange service charge.⁴⁴ Sprint, Focal, Adelphia, and

⁴¹ Id.

⁴² GTE at 8.

⁴³ MCI WorldCom at 8-9.

⁴⁴ Joint CLEC Commenters at 14.

KMC agree that the additional definition added by the 1996 Act is much broader than the original definition, and in particular does not even require that the telecommunications service originate and terminate within the same exchange area.⁴⁵ Others demonstrate that the new definition must not simply duplicate the original because it would render the former superfluous and unnecessary.⁴⁶ Further, "comparable" does not mean "identical" or "substitutable" or "equivalent," it means "similar." In particular, the Wisconsin Public Service Commission, after a careful parsing of the new language employed by Congress, concludes that DSL-enabled services fall well within its confines.⁴⁷ Level 3 explains that DSL services certainly are comparable to traditional local exchange services because, among other things, the ILECs are using it to replace local dial-up traffic to ISPs.⁴⁸

Thus, the overwhelming verdict of the commenting parties in this proceeding is that DSL-enabled services can, and do, fall within the statutory definition of telephone exchange service.

C. DSL Capability Can Be Used To Provide Exchange Access Service

In most cases, DSL-enabled services will meet the definition of telephone exchange service. Nevertheless, there are some possible uses of the technology that could lead to classifying a DSL-based service as exchange access. The statute defines "exchange

⁴⁵ Sprint at 5; Focal/Adelphia/KMC at 8.

⁴⁶ Mindspring at 4-5; Prism at 11-13.

⁴⁷ Wisconsin PSC at 3-6.

⁴⁸ Level 3 at 7.

access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."⁴⁹ As noted above, a DSL-equipped loop can be used in a service offering provided to interexchange carriers. SBC insists that "a carrier providing 'telephone toll service' cannot purchase DSL service in order to gain access to its long distance subscribers via their telephone exchange services."⁵⁰ Again, HDSL-equipped local loops are a standard way of providing special access. The commenting ILECs, and a few CLEC parties, seem to focus exclusively on one variation of DSL technology -- ADSL -- that most recently is being deployed as a substitute for dial-access to ISPs.

Rhythms states that DSL is an exchange access service because it originates and terminates "telephone toll service."⁵¹ Nonetheless, Rhythms acknowledges that the Commission's traditional "end-to-end" telecommunications analysis is inappropriate for advanced services because it unnecessarily and mistakenly conflates DSL telecom services with ISP services.⁵² In the words of Rhythms, the Commission should "separate the pipe from the cloud." MCI WorldCom agrees. Other commenters indicate that the exchange access definition does not readily fit many DSL applications for precisely this reason. For example, Level 3 and others stress that ISPs provide information services, not telecommunications services; because ISPs do not provide "telephone toll services, " they do

⁴⁹ 47 U.S.C. Section 153(16).

⁵⁰ SBC at 7.

⁵¹ Rhythms at 16-18.

⁵² Rhythms at 21-25.

not obtain exchange access.⁵³ It is for this reason, among others, that MCI WorldCom believes that the Commission's conclusion elsewhere that dial-up calls to ISPs constitutes special access service is contrary to the 1996 Act.⁵⁴ Where an IXC is utilizing DSL technology as part of its offering of a "telephone toll service," however, the LEC could properly be considered to be providing DSL as an exchange access service.⁵⁵

D. To The Extent Information Access Is Even Recognized As A Valid Class Of Telecommunications Services, It Is Local Exchange Service

US West claims that the Commission should have classified DSL-enabled services, not as a telephone exchange or exchange access service, but instead as an "information access" service. SBC and GTE both agree that DSL may be "information access,"⁵⁶ while Covad -- alone among the non-ILECs -- also embraces the "information access" classification of DSL-enabled services.⁵⁷ The ILECs and Covad assert that this definition comes from the 1982 Modification of Final Judgment ("MFJ"), which required the BOCs to provide to all IXCs and ISPs "exchange access, information access, and exchange

⁵³ Level 3 at 3; Focal/Adelphia/KMC at 4.

⁵⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order, CC Docket No. 96-98, FCC 99-38 (rel. Feb. 28, 1999), appeal pending sub nom., Bell Atlantic Tel. Co. v. FCC, No. 99-1094 (D.C. Cir).

⁵⁵ Because DSL-enabled loops could be included in some ILEC exchange access services, MCI WorldCom did not object to FCC approval of GTE's interstate tariff for a "DSL service" that combines DSL-equipped loops with packet switches and interoffice transport. MCI WorldCom strongly objects, however, to any thought that DSL technology can be used only to provision exchange access services.

⁵⁶ SBC at 9; GTE at 10.

⁵⁷ Covad at 4.

services."⁵⁸ In turn, "information access" was defined as the provision of

specialized exchange telecommunications services by a BOC in an exchange area in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services."⁵⁹

MCI WorldCom already has explained that, far from supporting the ILECs' claim that DSL "service" is not a telephone exchange service, the "information access" classification actually dictates the reverse. The definitional language cited in the MFJ clearly identifies "information access" as an "exchange telecommunications service." This means that information access is (1) a type of telecommunications service, and (2) a "specialized" type of exchange service.⁶⁰ In other words, "information access" is a local telecommunications service. Clearly, then, information access cannot be a form of exchange access.⁶¹

Other commenters urge the Commission not to adopt the ILECs' newfound "information access" category. One group of CLECs observes that had Congress intended to establish such a classification, and remove it from the reach of Section 251(c), it would have

⁵⁸ MFJ, Section II.A.

⁵⁹ MFJ, Section IV(I).

⁶⁰ Joint CLEC Commenters at 22-23.

⁶¹ As noted above, there are many specialized telephone exchange services, such as PBX trunks and Centrex, which the ILECs might have offered to ISPs or ISP customers. For whatever reason, the ILECs chose not to offer such specialized local services to ISPs until they began offering ADSL-enabled dedicated or packet-switched high-speed services to connect an end user to its ISP. Even if ILECs earlier had offered specialized local services to ISPs, the ISPs as end users were (and are) free to subscribe to any local exchange or exchange access service offered by an ILEC.

done so in a much more explicit fashion.⁶² Rhythms points out that the ILECs filed, and defended, their own DSL tariffs with the FCC as interstate special access, not information access. Even Covad, which defends the "information access" classification, still admits that the Commission could find DSL-enabled services to be telephone exchange services if it were to alter its previous jurisdictional analyses in the DSL tariffing and dial-up ISP traffic proceedings.⁶³

Finally, US West supports its interpretation of the 1996 Act by citing a footnote in the Non-Accounting Safeguards Order,⁶⁴ where the Commission states that the BOCs provide ISPs with "information access."⁶⁵ Even if this is the case -- and MCI WorldCom disputes that it is -- the MFJ definition makes it clear that the BOCs are providing local exchange service to ISPs. Of course, this is precisely MCI WorldCom's view with regard to dial-up traffic terminating to ISPs.

E. DSL-Enabled Services Are Subject To The Resale Requirement Of Section 251(c)(4)

GTE argues that the plain language of Section 251(c)(4) excludes advances services from the discount requirement.⁶⁶ This provision obligates the ILECs to offer for resale at wholesale rates "any telecommunications service that the carrier provides at retail to

⁶² Focal/Adelphia/KMC at 11.

⁶³ Covad at 6.

⁶⁴ US West at 8-9.

⁶⁵ 11 FCC Rcd 21905, 22023-24 n.621 (1996).

⁶⁶ GTE at 11.

subscribers who are not telecommunications carriers."⁶⁷ GTE claims that "DSL service" should not be subject to this provision because it is "an input into a retail Internet service," and because at least some advanced services will be provided to telecommunications carriers.⁶⁸

The Commission need not, and should not, consider in this proceeding the specific issue raised by GTE. As GTE is well aware -- but does not mention -- this very issue already has been raised in the context of an ongoing Commission investigation of a Bell Atlantic DSL tariff. MCI WorldCom and others have demonstrated that the ILECs cannot lawfully foreclose CLECs from reselling DSL services under Section 251(c)(4).⁶⁹ There is no need to delve into that issue in this proceeding as well. Further, the Commission should not even consider GTE's further request for forbearance in the context of this remand proceeding.⁷⁰ Indeed, GTE's legal case cannot be particularly strong if it was compelled to combine a request for a definitive ruling with a plea for relief from the outcome of that ruling.

⁶⁷ 47 U.S.C. Section 251(c)(4).

⁶⁸ GTE at 12.

⁶⁹ Petition of MCI WorldCom, Inc. To Reject Or, In The Alternative, Suspend And Investigate, Bell Atlantic Tel. Co. Tariff F.C.C. Nos. 1, 11, Transmittal No. 1138 (filed May 26, 1999).

⁷⁰ GTE at 13-14.

II. CONCLUSION

For the reasons explained above, and in MCI WorldCom's initial comments, the Commission should reaffirm its earlier conclusions, and declare that: (1) DSL technologies can be used to support a wide range of telecommunications services, including telephone exchange and exchange access services, and (2) CLECs are entitled to receive all DSL-related network elements, functionalities, and services pursuant to Section 251(c) of the Telecommunications Act of 1996.

Respectfully submitted,

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I, Denise Akoto, hereby certify, that I have this 1st day of October, 1999, sent a copy of the foregoing "Reply Comments of MCI WorldCom, Inc." in CC Docket Nos. 98-11 et al., by had hand delivery, to the following:

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